

MHRG030000842020



**Reg. Cri. Case No. 81/2020**

*(Mayur Kashinath Gharat Vs. Sunil Janardan  
Pednekar and others)*

**CNR No. MHRG030000842020**

**:: ORDER BELOW EXH. 01 IN R.C.C. NO. 81/2020 ::**

Perused the complaint, evidence of the complainant and witness Kashinath Gharat recorded vide section 202(2) of the Code of Criminal Procedure ('the Code' in short). Heard advocate of the complainant.

02. The complainant is praying to issue process against the accused for the offences punishable under sections 307, 324, 323, 354, 504, 506(II) r/w section 34 of the Indian Penal Code ('the IPC' in short). The complainant stated that on 04/03/2010 all the accused came to him, accused No. 01 assaulted him with stick then he took out revolver, aimed to the complainant and uttered that he will kill him. Before shooting the complainant, jerked his hand aside. At that time accused No. 02, 04, 05 and 07 assaulted the complainant with stick. He further stated that accused No. 03 hold his hands and instigated others to beat him.

03. It is further stated that parent of the complainant came on the spot of incident at that time accused No. 03 abused his mother in filthy language as, 'रोड रखेल, पोराला सांभाळता येत नाही' and also abused his father as 'मादरचोद' All the remaining accused also beat the

complainant with fists and abused him.

04. The complainant's evidence as well as evidence of his father Kashinath Parshuram Gharat recorded vide section 202(2) of the Code below Exh. 19 and 20 respectively. The complainant deposed that on 04/03/2010, accused No. 01 to 04 came to him, Sunil Pednekar assaulted him with stick, accused Ganesh Patil assaulted him with kicks and fists, accused Mahesh Baldi caught hold him and was instigating others to beat him. Accused Sunil Pednekar pointed revolver to the chest of the complainant, threatened him to kill at that time complainant jerked his hand aside and then accused No. 01 to 08 assaulted him with hands and fists. He also deposed that accused Mahesh Baldi abused her mother as 'रोड रखेल, पोराला सांभाळता येत नाही'. Accused Pravin Pednekar gave a fist blow upon mouth of his father. Witness Kashinath Gharat deposed near about the same things, but did not state anything about accused No. 05 to 09. If his evidence is closely scrutinized in light of the complaint and evidence of the complainant Exh. 19, the role played by these accused was, *prima facie*, appears to have over before reaching this witness to spot of the incident.

05. The complainant is requesting to take cognizance of the offence punishable under section 307 of the IPC. In complaint as well as in evidence of the complainant and witness Kashinath Gharat it only came of record that accused Sunil Pednekar pointed revolver towards the chest of the complainant. It nowhere came that he opened fire to the complainant. Here, I would like to rely upon illustration (a) and (c) appended to section 307 of the IPC which reads as;

- a) *A shoots at Z with intention to kill him, under such circumstances that if death ensued, A would be guilty of murder. A is liable to punishment under this section.*
- c) *A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and, if by such firing he wounds Z, he is liable to the punishment provided by the latter part of (the first paragraph of) this section.*

06. If both the illustrations are read harmoniously, make it clear that what act would come under this section. In our case there was no open fire from the side of the accused. Pointing revolver to someone and jerking hand of that person aside without shooting or opening fire, do not come under the purview of this section.

07. It is also prayed that the accused has committed offence punishable under section 354 of the IPC. The said section speaks about outraging modesty of a woman by assault or using criminal force. There is nothing came on record that the accused had assaulted or used criminal force to mother of the complainant to outrage her modestly. Uttering certain words does not come under this section however, accused Mahesh Baldi used certain words as 'रोड रखेल, पोराला सांभाळता येत नाही' to mother of complaint and which *prima facie* appears, used with intention to insult her modesty

therefore, the action of this accused falls under section 509 of the IPC.

08. There is nothing on record which shows the involvement of accused No. 09 in commission of the offences. Therefore, no process can be issued against him. Though the complainant has mentioned in the complaint that to issue process against the accused for the offences r/w section 34 of the IPC however, it *prima facie* appears that more than five persons by forming unlawful assembly, have committed the offence of assaulting the complainant and his father, threatening him and his parents as well as uttering words towards mother of the complainant with intention to insult her modesty, process can be issued for the offences punishable under sections 143, 147 and 148 r/w section 149 of the IPC. A Court's power cannot be restricted only to issue process for the offences which are stated by the complainant in complaint. If there *prima facie* appears other offences have been committed by the accused, a Court has power to issue process against those offences too. In the result, I pass the following order.

**:: ORDER ::**

01. Issue process against accused No. 01 to 08 for the offences punishable under sections 143, 147, 148, 323, 324, 504, 506(II), 509 r/w 149 of the Indian Penal Code, vide section 204(1)(b) of the Code of Criminal Procedure. Returnable on **03/04/2023**.
02. The complaint is dismissed in regard to the offences punishable under sections 307 and 354 of the Indian Penal Code vide section 203 of the Code of Criminal Procedure.

03. The complaint is dismissed in regard to accused No. 09 vide section 203 of the Code of Criminal Procedure.

Alibag.  
Date : 20/03/2023.

( S.W. Ugale )  
Chief Judicial Magistrate,  
Raigad Alibag.